88-208

PETITION NO. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER 1987 TERM

JAMES R. WARDELL,

PETITIONER

V.

DIAMOND FARMS CONDOMINIUM,

RESPONDENT

ON WRIT OF CERTIORARI TO THE

COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

James R. Wardell, Petitioner
870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279

I. Question Presented for Review

Whether the unreported award of attorney's fees pursuant to statute in a state libel case, contrary to established libel case law, when there are no prior reported cases of an award of attorney's fees in a libel case is a violation of Fourteenth Amendment rights to due process of law and the equal protection of the laws.

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IV. Opinions Delivered in the Court Below

1. Unreported Opinion of the Court of Special Appeals of Maryland of December 23, 1987 in James R. Wardell v. Diamond Farms Condominium, No. 720, September Term, 1987 (page 36 hereinafter).

2. Order of the Court of Appeals of Maryland of April 21, 1988 in James R. Wardell v. Diamond Farms Condominium, Petition Docket No. 633 (page 44 hereinafter).

V. Statement of the Grounds on Which the Jurisdiction of this Court is Invoked

Petitioner requests review on Writ of Certiorari by this Court of an Order of the Court of Appeals of Maryland of April 21, 1988 (page 44 hereinafter) denying Petitioner's petition for certiorari in that court, on the grounds that the Maryland courts in the instant case have decided federal questions in a way in conflict with applicable decisions of this Court, pursuant to the provisions of 28 U.S.C. § 1257(3) and U.S. Supreme Court Rule 17.1(c).

VI. Constitutional Provisions, Treaties, Statutes, Ordinances, and Regulations

1. Constitution of the United States, Amendment XIV, Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. 28 U.S.C. § 1257. State courts; appeal; certiorari.

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution,

treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

3. U.S. Supreme Court Rule 17. Considerations governing review on certiorari.

.1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of

last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

.2. The same general considerations outlined above will control in respect of petitions for writs of certiorari to review judgments of the United States Court of Appeals for the Federal Circuit, the United States Court of Military Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari.

4. Maryland Rule 1-341. Bad Faith--Unjustified Proceeding.

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or

without substantial justification the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

VII. Statement of the Case

1. Petitioner filed a Complaint alleging libel (in the District Court of Maryland for Montgomery County on October 14, 1985, and upon transfer filed a Complaint) in the Circuit Court for Montgomery County, Maryland on May 27, 1986 (page 69 hereinafter). The Complaint demanded damages for alleged publication of defamatory letters in Defendant Condominium's Clubhouse.

2. Defendant in the action filed Answers to Interrogatories on February 20, 1986 (page 80 hereinafter) admitting factual allegations of the Complaint..

3. The Circuit Court awarded Defendant's attorney's fees in the amount of $3542 on July 22, 1986 (pages 45 and 47 hereinafter) pursuant to Maryland Rule 1-341 on a finding of frivolousness.

(Defendant's Motion to Dismiss was granted thereafter.)

4. Petitioner appealed to the Court of Special Appeals of Maryland, inter alia, on the grounds that the award of attorney's fees was erroneous as a matter of law and fact. The Court of Special Appeals in its unreported Opinion of December 23, 1987 (page 36 hereinafter) affirmed the action of the lower court.

5. Petitioner filed a Petition for Writ of Certiorari in the Court of Appeals of Maryland (page 49 hereinafter) requesting review on the grounds that the Opinion of the Court of Special Appeals was an extraordinary construction of Maryland Rule 1-341 and/or of the law of libel, and if not reversed should be reported. The Court of Appeals denied the Petition on April 21, 1988 (page 44 hereinafter).

6. The Court of Appeals of Maryland is the highest court of the State and the state court of last resort.

7. The award of attorney's fees contrary to established libel case law and failure to report the case deny Petitioner due process of law and the equal protection of the laws contrary to the Fourteenth Amendment. The question of the equal protection of the laws arises from a Question presented to the Court of Special Appeals (Appellant's Brief, pages 6 and 7), as follows:

> 2. The action for damages pursuant to libel is clearly neither in bad faith nor without substantial justification, and therefore the award of Defendant's attorney's fees is clearly an abuse of discretion and should be reversed.

and from Questions presented to the Court of Appeals (Petition for Writ of Certiorari, page 1; page 50 hereinafter), as follows:

1. Whether the award of Defendant's attorney's fees in the action for libel from which the appeal was taken, is clearly erroneous or an abuse of discretion; and thereto

2. Whether the Complaint in the Circuit Court states an actionable claim for libel as a matter of law, and

3. Whether Defendant's Answers to Interrogatories substantially justify the action as a matter of fact; and

The question of due process of the law (and of the equal protection of the laws) arises from a Question presented to the Court of Appeals (Petition for Writ of Certiorari, page 2; page 50 hereinafter), as follows:

4. Whether the case should be reported.

The Court of Special Appeals as to Question No. 2 found that "We cannot say that Judge McKenna was clearly erroneous in finding that the suit was frivolous" (page 40 hereinafter). The Court of Appeals as to the Petition for Writ of Cer-

tiorari ordered "that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest" (page 44 hereinafter).

VIII. Argument

1. The Fourteenth Amendment requires due process of law and the equal protection of the laws. (cases)

The Fourteenth Amendment to the Constitution of the United States requires, in part,

> ...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This Court has said,

> This clause [due process of law] requires that actions by states through any of its agencies must be consistent with fundamental principles of liberty and justice which lie at the base of our civil and political institutions. Buchalter v. People of State of New York, N.Y. 1943, 63 S.Ct. 1129, 319 U.S. 427, 87 L.Ed. 1492.

and,

> U.S.Mo.1879. "Equal protection of the laws," within Constitutional guaranty, means that no person or class of persons shall be denied the same protection of the laws which

is enjoyed by other persons or other classes in the same place and under like circumstances. State of Mo. v. Lewis, 101 U.S. 22, 25 L.Ed. 989.

U.S.Ala.1964. The concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged. Reynolds v. Sims, 84 S.Ct. 1362, 377 U.S. 533, 12 L.Ed.2d 506, rehearing denied 85 S.Ct. 12, 379 U.S. 870, 13 L.Ed.2d 76 and Vann v. Baggett, 85 S.Ct. 13, 379 U.S. 871, 13 L.Ed.2d 76 and McConnell v. Baggett, 85 S.Ct. 13, 379 U.S. 871, 13 L.Ed.2d 77.

and,

The concept of equal protection of the laws and due process both stem from the American ideal of fairness, and are not mutually exclusive, nor are the concepts always interchangeable, in that equal protection of the laws is a more explicit safeguard of prohibited unfairness than due process of law, but a discrimination may nevertheless be so unjustifiable as to be violative of due process. Bolling v. Sharpe, App.D.C.1954, 74 S.Ct. 693, 347 U.S. 497, 98 L.Ed. 884, supplemented 75 S.Ct. 753, 349 U.S. 294, 99 L.Ed. 1083.

U.S.W.Va.1879. The Fourteenth Amendment to the Federal Constitution is

to be construed liberally to carry out the purposes of its framers. Strauder v. State of W. Va., 100 U.S. 303, 25 L.Ed. 664.

This Court has said also,

U.S.Pa.1865. Rule of law should be fixed deliberately and adhered to firmly unless clearly erroneous. Gilman v. City of Philadelphia, 70 U.S. 713, 3 Wall. 713, 18 L.Ed. 96.

Settled principles of law cannot be disregarded in order to remedy the hardships of special cases. U.S.Ct.Cl.1879, Silliman v. U.S., 101 U.S. 465, 25 L.Ed. 987. U.S. Ill.1880, Buchanan v. City of Litchfield, 102 U.S. 278, 26 L.Ed. 138.

In cases other than such as arise under the contract clause, Art. 1, § 10, cl. 1, it is the appropriate function of the court of last resort of a state to determine the meaning of local statutes. Plymouth Coal Co. v. Pennsylvania, Pa.1914, 34 S.Ct. 359, 232 U.S. 531, 58 L.Ed. 713.

And, as to the Fourteenth Amendment,

Application by judiciary of states common law, even in a lawsuit between private parties, may constitute "state action" which must conform to the constitutional structures which constrain the government, even

where the court is simply enforcing a privately negotiated contract. Edwards v. Habib, 1968, 397 F.2d 687, 136 U.S.App.D.C. 126, certiorari denied 89 S.Ct. 618, 393 U.S. 1016, 21 L.Ed.2d 560.

U.S.Del.1961. No state may effectively abdicate its responsibilities under Fourteenth Amendment by either ignoring them or by merely failing to discharge them, whatever the motive may be. Burton v. Wilmington Parking Authority, 81 S.Ct. 856, 365 U.S. 715, 6 L.Ed.2d 45.

U.S.Cal.1953. The Constitution confers upon no individual the right to demand action by a state which results in the denial of equal protection of the laws to other individuals. Barrows v. Jackson, 73 S.Ct. 1031, 346 U.S. 249, 97 L.Ed. 1586, rehearing denied 74 S.Ct. 19, 346 U.S. 841, 98 L.Ed. 361.

And,

It is essential that opinions of the courts be readily accessible to the legal profession generally and to the courts for purposes of research, citation and general information. Garfield v. Palmieri, D.C.N.Y., 193 F.Sup. 137, aff., C.A., 297 F.2d 526, cert. denied 82 S.Ct. 1139, 369 U.S. 871, 8 L.Ed.2d 275.

The Maryland Courts of Appeals have said,

> The doctrine of stare decisis is a part of our judicial system, and it rests upon the principle that the law by which men are governed should be fixed, definite, and known, and that, when it is declared by a court of competent jurisdiction authorized to construe it, such declaration, in the absence of palpable mistake or error, is itself evidence of the law until it is changed by competent authority. Griffith v. Benzinger, 125 A. 512, 520, 144 Md. 575 (1924).
>
> Md.App.1976. Unreported cases are not acceptable authority. Powers v. Hadden, 353 A.2d 641, 30 Md.App. 577.

2. The instant case of an award of attorney's fees in the amount of $3542 in a libel case in the Maryland courts.

The Complaint filed in the (Maryland) Circuit Court in the instant case is set forth as follows (page 69 hereinafter):

COMPLAINT

> TO THE HONORABLE, THE JUDGES OF SAID COURT:
>
> Plaintiff, James R. Wardell, respectfully represents, pursuant to this Court's Order of April 21,

1986, filed herein, an action for damages pursuant to libel; to wit:

1. That Defendant thence has maliciously published in Defendant's Clubhouse a letter of October 12, 1984, attached hereto, recommending Plaintiff's removal from a Committee, charging falsely that Plaintiff wasted the Committee's time, without substantial justification, and

2. That Defendant has maliciously published as aforesaid a letter of October 22, 1984, attached hereto, imputing Plaintiff's lack of fitness for appointment to any other committee, without substantial justification;

3. That the aforesaid publications have continued notwithstanding Plaintiff's request of August 5, 1985 to Defendant to remove the letters; and

4. That the aforesaid publications injuriously affect Plaintiff's office (committee membership) and reputation, without justifiable cause.

WHEREFORE, Plaintiff asks:

1. That this Court award Plaintiff $1000 compensatory and $5000 punitive damages, plus court costs; and

2. That the Plaintiff be awarded such other and further relief as the nature of his cause may require.

Letters attached to the Complaint are to be found at page 73 hereinafter.

Maryland libel pleading requirements are set forth by the Court of Appeals of Maryland in Metromedia, Inc. v. Hillman, 285 Md. 161, 400 A.2d 1117, 1123 (1979) on certified questions from the United States District Court for the District of Maryland, as follows:

> ...in order for a declaration alleging libel in a Maryland court to withstand the test of a demurrer it must allege:
>
> (1) a false and defamatory communication
> a--which the maker knows is false and knows that it defames the other, or
> b--that the maker has acted in reckless disregard of these matters, or
> c--that the maker has acted negligently in failing to ascertain them, and
>
> (2) that the statement was one which appears on its face to be defamatory, as, e.g., a statement that one is a thief, or the explicit extrinsic facts and innuendo which make the statement defamatory, and
>
> (3) allegations of damages with some particularity, since Gertz and Jacron forbid presumed damages.

The instant Complaint conforms to the pleading requirements of Metromedia, (i) in setting forth publication in Defendant's Clubhouse of defamatory letters notwithstanding Plaintiff's request that the letters be removed, conforming to the requirements of Metromedia, paragraph 1(b), (ii) in that the charges of the letters are set forth and are on their face defamatory, conforming to the requirements of Metromedia, paragraph 2, and (iii) in setting forth injury to Plaintiff in office and to Plaintiff's reputation, conforming to the requirements of Metromedia, paragraph 3. The Complaint is substantially similar to the Complaint in Foley v. Hoffman, 188 Md. 273, 52 A.2d 476, 479 (1947), an action for libel by a public servant as to newspaper publications.

Defendant filed Answers to Interrogatories in the instant case, in relevant

part, as follows (page 80 hereinafter):

> Answer to Interrogatories No. 5:
> Only owners, residents, or employees of Diamond Farms and guests attending private parties for which the Clubhouse is rented, are permitted access to the Clubhouse.
>
> Answer to Interrogatories No. 6:
> The only persons who had access to said letters were the Community Manager, Jeanne Smarte, the Assistant Managers, Linda Atkinson and Roz Jewel and the Administrative Aide, Melissa Kruger, all of whom were or are employees of Diamond Farms. These persons had access to said letters because they are responsible for maintaining the looseleaf files in the Clubhouse.
>
> Answer to Interrogatories No. 9:
> From October 1984 to the present, there have been fifty-one (51) meetings held in the Clubhouse, which include Board of Directors' meetings and committee meetings, nine (9) parties sponsored by Diamond Farms Condominium Association held in the Clubhouse and six (6) private parties for which the Clubhouse was rented.

thereby admitting factual allegations of the Complaint, and establishing unprivileged, extracorporate publication to non-owner residents and guests, in accordance

with Brush-Moore Newspapers, Inc. v. Pollitt, 220 Md. 132, 151 A.2d 530, 532 (1959) (distribution of copies to the employees of the newspaper would alone be evidence of publication).

The award of attorney's fees in the instant case pursuant to Maryland Rule 1-341 (effective July 1, 1984--predecessor Rule effective January 1, 1957) in an action for libel is without reported precedent in the State of Maryland. The State courts have never reported such an award in a libel case.

Petitioner seeks review by this Court on the grounds that (1) the award of attorney's fees on a finding of lack of substantial justification in the instant case is contrary to established Maryland libel case law and denies Petitioner the equal protection of the laws, and (2) the award is without due process of law or a denial of

equal protection because the case has not been reported, thus giving no indication that this extraordinary construction of Maryland Rule 1-341 and/or of the law of libel is the law of the future, and thereby applying the law unfairly to Petitioner.

3. Beck v. Washington, 82 S.Ct. 955, 369 U.S. 541 (1962).

In the case of Beck v. Washington, 82 S.Ct. 955, 369 U.S. 541 (1962), this Court granted certiorari to review a State conviction, on questions, inter alia, of whether the grand jury was unfairly impaneled.

> This failure of the judge [to fulfill his state statutory duty to insure an unbiased grand jury] denies petitioner a protection which Washington has provided to similarly situated defendants over the years and which, so far as now foreseeable, Washington will continue to provide to all Washington defendants in the future. This failure would be cast in a different light if the Washington Legislature had repealed its

> law or if its Supreme Court had altered its interpretation and set out a general rule abrogating the right to have judges take affirmative action to insure an unbiased grand jury. But without any change in the prior law or any sure indication that Beck's "law" is the law of the future, the State of Washington in convicting Beck applies special and unfair treatment to him. For only Beck, a single individual out of all the people charged with crime by indictment in Washington, is denied his clearly defined right under the law to have the state judicial system insure his indictment by "impartial grand jurors." Through the device of an equally divided vote in the Washington Supreme Court he goes to prison for 15 years. I think that the Equal Protection Clause of the Fourteenth Amendment forbids such an invidious picking out of one individual to bear legal burdens that are not imposed upon others similarly situated.[10]
>
> 10. See Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U.S. 96, 104-105, 19 S.Ct. 609, 612-613, 43 L.Ed. 909. Cf. McFarland v. American Sugar Refining Co., 241 U.S. 79, 86, 36 S.Ct. 498, 501, 60 L.Ed. 899.
>
> Id. at 968-969 (dissenting opinion).

However, this Court affirmed the judgment, saying,

> Finally, were we to vacate this conviction because of a failure to follow certain procedures although it has not been shown that their ultimate end--a fair grand jury proceeding--was not obtained, we would be exalting form over substance contrary to our previous application of the Equal Protection Clause, e.g., Graham v. West Virginia, 224 U.S. 616, 630, 32 S.Ct. 583, 588, 56 L.Ed. 917 (1912).
>
> Id. at 963, n.8.

4. The judgment in the instant case is unfair, and the case is otherwise similar in principle to Beck, supra.

The instant case is similar to Beck, supra, because the case has not been reported when there are no reported Maryland cases of an award of attorney's fees in a libel case, thus giving no indication that this construction is the law of the future, thereby applying the law unfairly to Petitioner. The device is similar to the device in Beck, supra at 969. And, while the judgment in Beck was affirmed (dissenting opinion notwithstanding)

because it had not been shown that a fair proceeding was not obtained, supra at 963, n.8, the judgment in the instant case is unfair as based upon a finding contrary to principles set forth in prior reported libel cases.

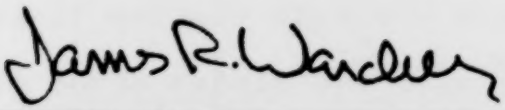
5. The Petition for Writ of Certiorari should be granted accordingly.

That the Courts of the State of Maryland in the instant case through an unfair device--failure to report a new construction of the law--apply the law unfairly to Petitioner in awarding attorney's fees in a libel case is forbidden by the Equal Protection Clause of the Fourteenth Amendment as "an invidious picking out of one individual to bear legal burdens that are not imposed upon others similarly situated," Beck, supra at 969. An unfair result, which this Court deemed essential to a

finding of denial of petitioner's rights, and found to be absent in Beck, is to be found in the instant case. That the award of attorney's fees is unfair to Petitioner is inseparable from failure to report the case. The state device in the instant case is complete with effect, and unfairly denies Petitioner's constitutional right to the equal protection of the laws, if not due process of law as well. Bolling v. Sharpe, supra.

This Court should grant the Petition for Writ of Certiorari to review the actions in this matter of the Court of Appeals of Maryland accordingly, on the grounds that Petitioner has been denied due process of law and/or the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,



James R. Wardell, Petitioner
870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279

SUPREME COURT OF THE UNITED STATES

James R. Wardell, Petitioner	)	
v.	)	Petition No. _____
	)	October 1987 Term
Diamond Farms Condominium, Respondent	)	

AFFIDAVIT OF SERVICE

Petitioner, James R. Wardell, hereby certifies as follows:

1. I am competent to give this Affidavit.

2. On July 19, 1988, I sent three copies of the Petition for Writ of Certiorari herewith, by U.S. Mail, first-class postage prepaid, to P. Michael Nagle and Paul J. Levine, Attorneys for the Respondent, at Hyatt & Rhoads, P.C., 1275 K St., N.W., Suite 1100, Washington, DC 20005, in compliance with U.S. Supreme Court Rule 28.3.

I do solemnly declare and affirm under the penalties of perjury that the matters and facts set forth herein are true to the best of my knowledge, information and belief.

[signed]

James R. Wardell, Petitioner
870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 720

September Term, 1987

JAMES R. WARDELL

v.

DIAMOND FARMS CONDOMINIUM

Moylan,
Bloom,
Bell, Robert M.,

JJ.

PER CURIAM

Filed: December 23, 1987

The appellant, James R. Wardell, sued the appellee, Diamond Farms Condominium, in the District Court of Maryland for Montgomery County for defamation. He alleged that the Condominium maliciously published false statements about him in two of its Clubhouse letters. Upon the Condominium's demand for a jury trial, the suit was transferred to the circuit court. Ultimately, upon the Condominium's motion for summary judgment, the circuit court dismissed the appellant's claim with prejudice. The circuit court, in addition, had earlier, in a hearing on a counterclaim, found that the appellant's suit was frivolous and awarded attorney's fees to the Condominium. An order was signed directing the appellant to pay the Condominium $3,542, the amount reflected in the Condominium's Revised Statement of Account. The circuit court thereafter denied the

appellant's motion to strike the Condominium's Revised Statement of Account. The appellant has filed this appeal from the orders of the circuit court awarding the attorney's fees and refusing his motion to strike.

The frivolous nature of the appellant's suit came into question at a hearing on July 22, 1986, on the appellant's motion for summary judgment as to a counterclaim filed by the Condominium alleging malicious abuse of civil process. Judge J. James McKenna denied the appellant's motion. Based on the pleadings, he also concluded that the appellant's suit was frivolous and awarded attorney's fees to the Condominium. Judge McKenna stated in his order:

> "All costs and lawyers' fees incurred in responding to this frivolous suit assessed against plaintiff/counter-defendant. Defendant/counter-plaintiff to submit an accounting on lawyers' fees!

/s/_____
Judge
JUDGE J. JAMES McKENNA"

(Emphasis in original).

In a "note" at the bottom of the order, Judge McKenna explained the reason for his decision. Judge McKenna pointed out that this was the second time the appellant had brought such an action against his condominium association:

> "This is the SECOND frivolous lawsuit which this Court has seen--in as many duty weeks--filed by this plaintiff/counter-defendant. The only portion of J. Sanders' ruling of June 17 [denying appellant's motion to dismiss the Condominium's counterclaim] ...with which I disagree is in re lawyers' fees. I would have granted SUBSTANTIAL lawyers' fees & costs."

At a hearing on October 16, 1986, on the Condominium's motion for summary judgment as to the appellant's claim, Judge Stanley B. Frosh found the appellant's complaint failed on its face to state a claim for defamation and dismissed the complaint

with prejudice.[1] The appellant did not oppose the motion for summary judgment as to his claim. Judge Frosh deferred to Judge McKenna as to the attorney's fees. We cannot say that Judge McKenna was clearly erroneous in finding that the suit was frivolous.

The appellant contends, however, that the finding that his suit was frivolous is not tantamount to a finding that the suit was brought "without substantial justification." Md. Rule 1-341 provides that counsel fees may be awarded to an opposing party where any proceeding was brought "in bad faith or without substantial justification." The appellant argues

---

[1]The Condominium also filed a motion for summary judgment as to its counterclaim. This motion as to the counter claim was denied by Judge Frosh. The counterclaim was ultimately dismissed on February 7, 1987, pursuant to the appellant's motion to dismiss.

that Judge McKenna was obliged to make a specific finding that the action was brought "in bad faith or without substantial justification" in order to justify the award of attorney's fees.

In characterizing the appellant's action as frivolous, it is clear that Judge McKenna found that the appellant's suit was brought without substantial justification. Indeed, without getting into semantics, the terms "frivolous" and "without substantial justification" are often used interchangeably in awarding counsel fees. In Blanton v. Equitable Bank, National Assn., 61 Md.App. 158 (1985), we said, at 165-166:

> "[T]he order from which Blanton appealed was not appealable. We hold that the appeal was without substantial justification. It was not an attempt at 'innovation or exploration beyond existing legal horizons.'... It was frivolous because it 'undisputably had no merit....'" (Citation omitted)(Emphasis added).

We concluded, at 61 Md.App. 166:

> "[G]iven the frivolous nature of this appeal, we perceive no reason not to exercise our discretion in favor of an award."

Since the suit was "frivolous" and since the appellant does not challenge the dollar amount of the award, we hold that Judge McKenna did not abuse his discretion in the award of counsel fees.

Finally, the appellant contends that the Condominium's Revised Statement of Account was not served upon him, lacked a certificate of service as required under Md. Rule 1-323, and "should not have been filed." He contends that the court, therefore, under Md. Rule 2-322(e) should have stricken the Revised Statement.

The motion to strike the Revised Statement was addressed to the sound discretion of the trial court. See Lancaster v. Gardiner, 225 Md. 260 (1960). The

original Statement of Account was filed in an incorrect amount. Although the appellant did not receive notice of the Revised Statement, he does not affirmatively contest the amount of the award. Under the circumstances, the appellant has not demonstrated any prejudice. We hold that the circuit court did not abuse its discretion in refusing to strike the Revised Statement of Account.

As to the Condominium's request for attorney's fees incurred in responding to this appeal, we have considered that request and hereby deny it.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

James R. Wardell	)	In the Court of Appeals of Maryland
v.	)	Petition Docket No. 633 September Term, 1987
Diamond Farms Condominium	)	(No. 720 September Term, 1987 Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: April 21, 1988

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

JAMES R. WARDELL,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	CIVIL ACTION
	)	No. 12570
DIAMOND FARMS CONDOMINIUM,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

UPON CONSIDERATION of Plaintiff/Counter-Defendant's Motion for Summary Judgment and Defendant/Counter-Plaintiff's Opposition thereto it is by the Court this 22 day of July, 1986, hereby

ORDERED, that Plaintiff/Counter-Defendant's Motion be and hereby is denied.

All costs and lawyers fees incurred in responding to this frivolous suit assessed against plaintiff/counter defendant. Defendant/counter plaintiff to submit an accounting on lawyers fees!

[signed]

Judge
JUDGE J. JAMES McKENNA

cc: P. Michael Nagle
Shelah M. Fidellman
James R. Wardell

NOTE: This is the SECOND frivolous lawsuit which this Court has seen --in as many duty weeks--filed by this plaintiff/counter defendant. The only portion of J. Sanders ruling of June 17 (see tabs #21 & 22 herein) with which I disagree is in re lawyers fees. I would have granted SUBSTANTIAL lawyers fees & costs.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

JAMES R. WARDELL,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	CIVIL ACTION No. 12570
	)	
DIAMOND FARMS CONDOMINIUM,	)	
	)	
Defendant/Counter-Plaintiff.	)	

ORDER

Pursuant to a previous order for attorney's fees on July 22, 1986, and Defendant's revised Statement of Account of costs, is by the Court this 2 day of January, 1987, hereby

ORDERED, that Plaintiff/Counter-Defendant pay to the Defendant/Counter-Plaintiff costs and attorney's fees in the amount of Three Thousand Five Hundred Forty-Two Dollars ($3,542.00).

[signed]

JUDGE, Montgomery
County Circuit Court
JUDGE J. JAMES McKENNA

cc: P. Michael Nagle
James R. Wardell

[sic]

IN THE COURT OF APPEALS OF MARYLAND

James R. Wardell Appellant	)	
vs	)	Petition No. _____
Diamond Farms Condominium Appellee	)	

PETITION FOR WRIT OF CERTIORARI

PETITION FROM JAMES R. WARDELL VS. DIAMOND FARMS CONDOMINIUM, NO. 720, SEPTEMBER TERM, 1987, IN THE COURT OF SPECIAL APPEALS OF MARYLAND

OPINION: DECEMBER 23, 1987

MANDATE ISSUED: JANUARY 22, 1988

Appellant, James R. Wardell, respectfully represents unto Your Honors pursuant to Maryland Rule 811, Appellant's Petition for Writ of Certiorari from the aforesaid Opinion, attached hereto as Exhibit A, of the Court of Special Appeals of Maryland as follows:

QUESTIONS PRESENTED FOR REVIEW

1. Whether the award of Defendant's attorney's fees in the action for libel from which the appeal was taken, is clearly erroneous or an abuse of discretion; and thereto,

2. Whether the Complaint in the Circuit Court states an actionable claim for libel as a matter of law, and

3. Whether Defendant's Answers to Interrogatories substantially justify the action as a matter of fact; and

4. Whether the case should be reported.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

1. Maryland Rule 811. Writ of Certiorari

2. Maryland Rule 1-341. Bad Faith --Unjustified Proceeding

3. Diamond Farms Condominium Bylaws, Article V, Section 15. Covenants Committee

4. Courts and Judicial Proceedings Article of the Annotated Code of Maryland, Article IV, Section 16. Reports

STATEMENT OF FACTS

1. Plaintiff filed a Complaint alleging libel in the District Court of Maryland for Montgomery County on October 14,. 1985, and upon transfer filed a Complaint in the Circuit Court for Montgomery County, Maryland on May 27, 1986, attached hereto as Exhibit B (for additional case history, see Exhibit A);

2. Defendant filed Answers to Interrogatories on February 20, 1986, attached hereto in part as Exhibit C;

3. The Circuit Court awarded Defendant's attorney's fees on July 22, 1986 on a finding of frivolousness, Order attached

hereto as Exhibit D;

4. Appellant's Question No. 2 in the instant Appeal to the Court of Special Appeals was as follows:

> 2. The action for damages pursuant to libel is clearly neither in bad faith nor without substantial justification, and is not frivolous, and therefore the award of Defendant's attorney's fees is clearly an abuse of discretion and should be reversed;

and

5. The Court of Special Appeals affirmed the award of Defendant's attorney's fees, Exhibit A.

ARGUMENT

While the Circuit Court judge found the suit to be "frivolous" and awarded Defendant's attorney's fees, Exhibit D, and the Court of Special Appeals could not say that the finding was erroneous and affirmed, Exhibit A, page 2, neither court discusses the merits of the case or states

any basis for the finding of frivolousness.

An action is frivolous if it indisputably has no merit, Blanton v. Equitable Bank, National Association, 61 Md.App. 158, 485 A.2d 694 (1985) at 698, n.4, and the Court of Special Appeals states that "the terms 'frivolous' and 'without substantial justification' are often used interchangeably in awarding counsel fees," Exhibit A, page 3. Both lower courts are apparently of the opinion that the instant action for libel indisputably has no merit.

This unexplained finding is clearly contrary to the law of libel in the State of Maryland and the facts of the case. The instant decision of the Court of Special Appeals should be reviewed by the Court of Appeals for the following reasons:

1. THE AWARD OF ATTORNEY'S FEES IS ERRONEOUS BECAUSE THE COMPLAINT IS MERITORIOUS--THE ACTION IS JUSTIFIED IN LAW.

Pleading requirements for an action alleging libel are set forth in Metromedia, Inc. v. Hillman, 285 Md. 161, 400 A.2d 1117, 1123, n.4-6 (quod vide; cf. Complaint, Exhibit B). And, "actual injury" may include impairment of reputation, Id. at 1121.

The Complaint conforms to the pleading requirements of Metromedia, (i) in setting forth publication in Defendant's Clubhouse of defamatory letters notwithstanding Plaintiff's request that the letters be removed, conforming to the requirements of Metromedia, paragraph 1(b), (ii) in that the charges of the letters are set forth and are on their face defamatory, conforming to the requirements of Metromedia, paragraph 2, and (iii) in setting forth injury to Plaintiff's office (committee membership) and reputation, conforming to the requirements of Metromedia,

paragraph 3 and as to actual injury. (Evidentiary facts in Defendant's Answers to Interrogatories further establish the nature of the publication, see paragraph 2 hereinafter.)

The instant case is similar to Foley v. Hoffman, 188 Md. 273, 52 A.2d 476 (1947); q.v. at 479, "On November 30, 1945...," as to the Complaint. And, as to injury in office, "The words must go so far as to impute to him some incapacity or lack of due qualification to fill the position, or some positive past misconduct which will injuriously affect him in it," Id. at 481, n.1,2.

While there are no reported cases in Maryland of an action for libel brought by a corporation or association officer, the cause of action "extends to officers or agents of private corporations or associations,[22]" 53 C.J.S. LIBEL AND SLANDER

¶ 35. And, Defendant's Bylaws, Article V, Section 15, Covenants Committee, establishes the Committee of which Plaintiff was a member, and delegates some powers and duties of the Association's Board of Directors to the Committee. Wherefore, Plaintiff may bring an action for injury in office as an association officer.

The action and the Complaint, then, are substantially the same as Foley; charges and imputations of the letters in the instant case are sufficient to establish injury in office, and there is an allegation of actual injury, Metromedia, supra.

2. THE AWARD OF ATTORNEY'S FEES IS ERRONEOUS BECAUSE DEFENDANT'S ANSWERS TO INTERROGATORIES SUBSTANTIATE THE CLAIM--THE ACTION IS JUSTIFIED IN FACT.

The allegations of publication in Defendant's Clubhouse of the defamatory

letters, are substantiated by Defendant's Answers to Interrogatories Nos. 5, 6 and 9 (q.v., Exhibit C, pp. 33-34). Publication of the letters to nonowner residents and guests is clearly unprivileged, extra-corporate publication.

The instant case is similar to Brush-Moore Newspapers, Inc. v. Pollitt, 220 Md. 132, 151 A.2d 530 (1959), q.v. at 532, n.1,2. Answers to Interrogatories in the instant case support an inference of publication accordingly.

And, Minutes of Committee Meetings attached to the Interrogatories at No. 12 (omitted herefrom, but included in the Record in the Court of Special Appeals) establish Plaintiff's dutiful service to the Committee from July 1983 to October 1984.

3. THE DECISION OF THE COURT OF SPECIAL APPEALS IS ERRONEOUS

BECAUSE THE OPINION (AND THE ORDER AWARDING ATTORNEY'S FEES) LACKS ANY EXPLANATION WHATSOEVER OF THE FINDING OF FRIVOLOUSNESS, AND APPELLEE'S BRIEF CONTAINS INCORRECT STATEMENTS OF LAW AND MISLEADING STATEMENTS OF FACT.

The U.S. District Court for Maryland states that,

> In determining whether a case has been litigated "without substantial justification," within meaning of attorney fees rule, Maryland appellate courts have reviewed the fact, the law and the circumstances to ascertain whether there was at least some basis in law or fact for the action of the potential offender. Brady v. Hartford Fire Ins. Co., 610 F.Supp. 735 (1985).

And,

> Decisions of federal courts on a matter of state law are highly persuasive in determining the law of the state in which they sit. Frericks v. General Motors Corp., 278 Md. 304, 363 A.2d 460 (1976).

While the instant action for libel is meritorious--justified in law--and substantiated by evidence of record--justified in fact--, as set forth herein-

above, neither the Opinion, Exhibit A, nor the Order awarding attorney's fees, Exhibit D, states any explanation whatsoever of the finding of frivolousness. And, Appellee's Brief (Appellee submitted on Brief) contains typically incorrect statements of law and misleading statements of fact, as follows: (1) the standard of negligence set forth in Jacron Sales Co., Inc. v. Sindorf, 276 Md. 580, 350 A.2d 688, 697-698 (1976) is incorrectly referred to by Appellee as "elements of defamation," and (2) while Defendant denied all allegations of the Complaint, Appellee claims there "is no genuine dispute as to any material fact in the case."

Although awards of attorney's fees often lack explanation, reported appeals therefrom provide lengthy explanations; See, Brown v. Hardisty, 40 Md.App. 688, 395 A.2d 154 (1978), Shanks v. Williams,

53 Md.App. 670, 455 A.2d 450 (1983), Blanton v. Equitable Bank, National Association, supra, and Century I Condominium Association, Inc. v. Plaza Condominium Joint Venture, 64 Md.App. 107, 494 A.2d 713 (1985). See also, Hess v. Chalmers, 33 Md.App. 541, 365 A.2d 294 (1976). Blanton exemplifies such an award in the Court of Special Appeals.

4. THE DECISION OF THE COURT OF SPECIAL APPEALS IS ERRONEOUS BECAUSE THAT COURT CONSIDERED CIRCUMSTANCES SUBSEQUENT TO THE AWARD OF ATTORNEY'S FEES.

The question of substantial justification must be considered in the light of the circumstances that existed when the Rule 1-341 motion was decided, and not from the perspective of appellate hindsight. Q.V. Century, supra at 719, "Because appellants...."

In the instant case, however, where

there is no explanation of the finding of frivolousness (paragraph 3 hereinabove), the Court of Special Appeals in its Opinion improperly recites case history subsequent to the July 22, 1986 award of attorney's fees as a basis for the award, q.v. Opinion, Exhibit A, page 2, "At a hearing...."

5. THE DECISION OF THE COURT OF SPECIAL APPEALS IS ERRONEOUS BECAUSE THE OPINION STATES ERRORS OF FACT HARMFUL TO APPELLANT.

The Court of Special Appeals is clearly erroneous in finding that there was a hearing on the award of attorney's fees on July 22, 1986 (Opinion, Exhibit A, p. 1, pars. 1 and 2)--correctly, there was no hearing on the award of attorney's fees, neither were there written arguments. The award was sua sponte as to attorney's fees for the entire action. And, the Opinion states incorrectly that Appellee was a party to the lawsuit referred to in

the Order of July 22, 1986, Exhibit D (Opinion, Exhibit A, p.2)--correctly, Appellee was not a party to the referenced lawsuit. Both errors wrongfully substantiate the award of attorney's fees.

6. THE DECISION OF THE COURT OF SPECIAL APPEALS IS ERRONEOUS BECAUSE THE INSTANT LIBEL CASE AS TO AN ASSOCIATION OFFICER, AND THE AWARD OF ATTORNEY'S FEES IN AN ACTION FOR LIBEL, ARE BOTH WITHOUT REPORTED PRECEDENT IN MARYLAND, AND YET THE CASE HAS NOT BEEN REPORTED.

Because there are no reported cases in Maryland of an action for libel brought by a corporation or association officer, or of an award of attorney's fees pursuant to Maryland Rule 1-341 or a predecessor rule in a libel case, the instant award is precedential, and yet the case has not been reported.

Article IV, Section 16 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland requires pub-

lished Reports of cases designated for publication. And, "It is essential that opinions of the courts be readily accessible to the legal profession generally and to the courts for purposes of research, citation and general information,[9.5] as well as to others who may wish to refer to them,[9.10]" 77 C.J.S. REPORTS § 2.

The award of attorney's fees in the instant case is an extraordinary construction of Maryland Rule 1-341 and/or of the law of libel, and if not reversed should be reported.

7. THE DECISION IN THE COURT OF SPECIAL APPEALS IS ERRONEOUS BECAUSE WHILE REPORTED AWARDS OF ATTORNEY'S FEES HAVE BEEN IN CASES CLEARLY WITHOUT JUSTIFICATION, THE INSTANT COMPLAINT IS CLEARLY MERITORIOUS.

While "frivolousness" has been defined as "indisputably without merit," Blanton, supra at 698, the Maryland Courts of Ap-

peals have not stated any useful definition or explanation per se of "without substantial justification." Typically, a proceeding clearly without justification in law is grounds for an award of attorney's fees pursuant to Maryland Rule 1-341. See, Brown, Shanks, Blanton, and Century, all supra.

The Complaint in the instant case for libel, however, conforms to pleading requirements set forth by this Court, and the facts of the case are established by Defendant's Answers to Interrogatories, as set forth in paragraphs 1 and 2 hereinabove, and the action is simply not without substantial justification in the sense ordinarily used by the Courts of Appeals.

8. THE DECISION OF THE COURT OF SPECIAL APPEALS IS ERRONEOUS BECAUSE THAT COURT IN AFFIRMING THE AWARD OF ATTORNEY'S FEES IN THE INSTANT CASE HAS DISREGARDED THE DECISIONS OF THE COURT OF APPEALS

IN METROMEDIA, INC. V. HILLMAN, 285 MD. 161, 400 A.2D 1117 (1979) AND BRUSH-MOORE NEWSPAPERS, INC. V. POLLITT, 220 MD. 132, 151 A.2D 530 (1959).

The instant Complaint is meritorious and Defendant's Answers to Interrogatories are evidence of publication, pursuant to Metromedia, Inc. v. Hillman, supra, and Brush-Moore Newspapers, Inc. v. Pollitt, supra, respectively, both cases decided by the Court of Appeals, as set forth in paragraphs 1 and 2 hereinabove. It is beyond the authority of the Court of Special Appeals to decide contrary to clearly established law set forth by the Court of Appeals; Hans v. Franklin Square Hospital, 347 A.2d 905, 29 Md.App. 329 (1975).

The Court of Special Appeals, Opinion, Exhibit A, in finding that the instant action for libel is without substantial justification, has decided contrary to clearly established law set forth by the

Court of Appeals in Metromedia and Brush-Moore.

WHEREFORE, Appellant asks:

1. That this Court grant Appellant's Petition for Writ of Certiorari; and

2. That the Appellant be awarded such other and further relief as the nature of his cause may require.

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true to the best of my knowledge, information, and belief.

[signed]

James R. Wardell, Appellant
870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279

CERTIFICATE OF SERVICE

I certify that on this 8th day of February, 1988, I mailed a copy of this Petition to P. Michael Nagle and Paul J. Levine, Attorneys for the Appellee, at Hyatt & Rhoads, P.C., 1275 K St., N.W., Suite 1100, Washington, DC 20005.

[signed]

James R. Wardell, Appellant

EXHIBIT A is to be found herein at page 36.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

James R. Wardell Plaintiff	
vs	Civil Action No. 12570
Diamond Farms Condominium Defendant	

COMPLAINT

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Plaintiff, James R. Wardell, respectfully represents, pursuant to this Court's Order of April 21, 1986, filed herein, an action for damages pursuant to libel; to wit:

1. That Defendant thence has maliciously published in Defendant's Clubhouse a letter of October 12, 1984, attached hereto, recommending Plaintiff's removal

EXHIBIT B

from a Committee, charging falsely that Plaintiff wasted the Committee's time, without substantial justification, and

2. That Defendant has maliciously published as aforesaid a letter of October 22, 1984, attached hereto, imputing Plaintiff's lack of fitness for appointment to any other committee, without substantial justification;

3. That the aforesaid publications have continued notwithstanding Plaintiff's request of August 5, 1985 to Defendant to remove the letters; and

4. That the aforesaid publications injuriously affect Plaintiff's office (committee membership) and reputation, without justifiable cause.

WHEREFORE, Plaintiff asks:

1. That this Court award Plaintiff $1000 compensatory and $5000 punitive

damages, plus court costs; and

2. That the Plaintiff be awarded such other and further relief as the nature of his cause may require.

I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true to the best of my knowledge, information, and belief.

[signed]

James R. Wardell
870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279

CERTIFICATE OF SERVICE

I certify that on this 23rd day of May, 1986, I mailed a copy of this Complaint to P. Michael Nagle and Shelah M. Fidellman, Attorneys for Defendant Diamond Farms Condominium, at Hyatt & Rhoads, P.C., 1275 K St., N.W., Suite 1100, Washington, DC 20005.

[signed]

James R. Wardell

October 12, 1984

Diamond Farms Board of Directors
770 Quince Orchard Blvd., #101
Gaithersburg, Maryland 20878

The following is a recommendation by the members of the Covenants Committee to remove James Wardell from that committee for the reasons cited below:

1. He has wasted the committee's time so that it has not been able to function effectively and efficiently.

2. He has written a letter without the approval of the Covenants Committee to the Board of Directors recommending and requesting adoption of the Rules and Regulations for Diamond Farms (see attached).

Since he is the only person on the Covenants Committee who feels the committee does not know what it is doing, and has stated this, we do not feel his appointment to this committee is in the best interests of Diamond Farms.

We further recommend that he return all correspondence and papers pertiment to the Covenants Committee to the Board of Directors as soon as he is removed.

The vote of the committee members is as follows:

Recommend Removal [signed]	Oppose Removal	Abstain [signed]
Annie Amato	____	Catherine Collier
Bettie L. Willis	____	_____
Claire M. Nichter	____	_____
_____	____	_____

Sincerely,

[signed]

Claire M. Nichter
Chairperson, Covenants
Committee

870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279
October 10, 1984

Dear Pat,

Referring to my anticipated letter of November 7, 1984 to the Covenants Committee, enclosed, in the matter of Diamond Farms Condominium Rules and Regulations and specific Policy Resolutions pertaining thereto, also enclosed, the Board of Directors, at this evening's meeting, might wish to consider my recommendation that these be adopted at the present time.

Sincerely,

[signed]

James R. Wardell

copy to Roger Buchanan, Jim Kruger, Ellen Linder, Claire Nichter, and Annie Amato

870 Quince Orchard Blvd., #202
Gaithersburg, MD 20878
(301) 963-8279
November 7, 1984

To the Covenants Committee,

Diamond Farms Condominium Rules and Regulations, dated September 2, 1981, are to be found as Exhibit "E" in the Property Report of October 6, 1981. Thirty rules enumerated therein apply, generally, to use of the Common Elements; one applies to pets, and one applies to recreation areas, setting forth fifteen subrules pertaining mostly to use of the swimming pool.

These Rules and Regulations are also found in the Owner's Manual, with several formal Policy Resolutions for enactment of additional Rules and Regulations. The Policy Resolutions, No. 8, Pet Policies; No. 15, Use of Common Elements: Tennis Courts; and No. 16, Use of Common Elements: Clubhouse Rules (and No. 10, Unit Services Program), appear not to have been adopted by the Board of Directors.

Inasmuch as these Rules and Regulations and Policy Resolutions are generally appropriate and have already been distributed to the owners, I respectfully suggest that the Board of Directors should adopt these and any other such Policy Resolutions (and the Rules and Regulations of September 2, 1981) as written, and that any revisions should be accomplished thereafter.

Sincerely,

[signed]

James R. Wardell

(for distribution with the Minutes of the meeting of this date)

October 22, 1984

Mr. Pat Blew
Board of Directors
Diamond Farms Condominium
780 Quince Orchard Blvd.
Gaithersburg, Maryland 20878

Reference: Claire Nichter letter to Board of Directors, October 12, 1984
James Wardell letters to Board of Directors, October 23, 1984

Dear Pat:

I have just received from James Wardell a copy of a letter of resignation, dated October 23, 1984, from the Covenants Committee. If the Board agrees to accept this resignation from him, I would like to request that your minutes reflect the fact that the Covenants Committee had asked for his removal on October 12, 1984 from that committee. This might have some bearing on any possible future consideration for James Wardell's appointment to another committee.

With the vacancy now created on the Covenants Committee, that committee would like to recommend that Melissa Kruger, 862 T-2, be appointed as the fifth member of the Covenants Committee. Please notify her that the next meeting will be on November 7 at 7:00 p.m.

With the resignation letter, I also received a copy of a letter from James Wardell to the Board of Directors, dated

October 23, regarding deletions to Covenants Committee minutes. He states in the last paragraph that he "intends to require, upon recourse of appropriate legal action" that certain deletions be made to past minutes. I see no reason for these deletions since they are fact, not assumptions. I would appreciate hearing from the Board some comment and/or recommendation regarding this and his reference to the legal action.

Sincerely,

[signed]

Claire M. Nichter
Chairperson, Covenants Committee

cc: Members, Covenants Committee
Ellen Linder, Legum and Norman
Jeanne Smarte, Condominium Manager

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

JAMES R. WARDELL,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. _____
	)	District Court
DIAMOND FARMS CONDOMINIUM,	)	No. 18699-85
	)	
Defendant/Counter-Plaintiff.	)	

ANSWERS TO INTERROGATORIES

Defendant/Counter-plaintiff, Diamond Farms Condominium, objects to the Interrogatories propounded by Plaintiff/Counter-defendant, James R. Wardell, as such Interrogatories were filed in the District Court, which no longer has jurisdiction of the within matter. The case was transferred to Circuit Court upon the filing of a timely jury demand by Defendant/

EXHIBIT C

Counter-plaintiff, Diamond Farms Condominium (hereinafter referred to as "Diamond Farms"). However, in the spirit of Discovery, Diamond Farms will answer the Interrogatories.

1. State the name, address, and title of the person supplying the information requested herein, and making the affidavit, and the source of his information.

ANSWER: Jeanne Smarte, Community Manager
Agent for Diamond Farms Condominium
780 Quince Orchard Boulevard, #101
Gaithersburg, Maryland 20878

2. Specifically admit, deny or explain each of the facts alleged in the numbered paragraphs of the Complaint.

ANSWER: Diamond Farms denies all allegations in paragraph 1, all allegations in paragraph 2, all allegations in paragraph 3 and all allegations in paragraph

4 of the Complaint filed by Plaintiff.

3. State every defense of law or fact to the claim set forth in the Complaint upon which you intend to rely.

ANSWER: Plaintiff's Complaint fails to state a claim upon which relief may be granted, fails to state with particularity any false statements made on the part of Diamond Farms defaming Plaintiff, fails to allege any injury sustained by Plaintiff, and fails to allege the publication of defamatory statements about Plaintiff.

4. State any and all justification you may have whatsoever for the defamatory allegations of the letters complained of.

ANSWER: Diamond Farms denies that such letters were defamatory, and further states that all information contained in such letters was true.

5. Give a complete statement of Defendant's policy and practice for per-

mitting access to the Clubhouse to persons other than unit owners.

ANSWER: Diamond Farms objects to Interrogatory Number 5 as it is irrelevant to the subject matter of this case and is not likely to lead to the discovery of admissible evidence. However, in the spirit of discovery, Diamond Farms will answer this Interragatory. Only owners, residents, or employees of Diamond Farms and guests attending private parties for which the Clubhouse is rented, are permitted access to the Clubhouse.

6. Give a complete statement of any justification you may have whatsoever for providing access to the letters complained of to persons other than unit owners.

ANSWER: The only persons who had access to said letters were the Community Manager, Jeanne Smarte, the Assistant Managers, Linda Atkinson and Roz Jewel and

the Administrative Aide, Melissa Kruger, all of whom were or are employees of Diamond Farms. These persons had access to said letters because they are responsible for maintaining the loose-leaf files in the Clubhouse.

7. Name the person responsible for maintaining the loose-leaf files in the Clubhouse, and if otherwise, the person or persons who placed the letters complained of into the files.

ANSWER: Those persons listed in Answer to Interrogatory 6 are the persons responsible for maintaining the looseleaf files in the Clubhouse.

8. Name all persons other than unit owners, known to you to who the letters complained of have been communicated in any way whatsoever, and state the respective dates and means of communication.

ANSWER: Other than those persons

listed in Answer to Interrogatory 6, none known to Diamond Farms.

9. State the total number of parties or other such functions held in the Clubhouse from October, 1984, to present and the total number of attendees or anticipated attendees, if known, and the number of such parties held by persons other than unit owners.

ANSWER: Diamond Farms objects to Interrogatory Number 9 as it is irrelevant to the subject matter of this case and is not likely to lead to the discovery of admissible evidence. However, in the spirit of discovery, Diamond Farms will answer this Interrogatory to the best of its knowledge. From October, 1984 to the present, there have been fifty-one (51) meetings held in the Clubhouse, which include Board of Directors' meetings and committee meetings, nine (9) parties spon-

sored by Diamond Farms Condominium Association held in the Clubhouse and six (6) private parties for which the Clubhouse was rented. Diamond Farms has no knowledge as to the number of attendees at each function.

10. State the number of persons known to you to have obtained copies of any of Defendant's records, from October, 1984, to present.

ANSWER: No one, other than Plaintiff and Diamond Farm's legal counsel have obtained such records, to the best of Diamond Farms' knowledge, information and belief.

11. Name any and all persons known to you to have obtained copies from the Covenants Committee file kept in the Clubhouse, since October, 1984.

ANSWER: No one other than Plaintiff has obtained copies from the Covenants

Committee files, to the best of Diamond Farms' knowledge, information and belief.

12. Attach hereto copies of minutes of all Covenants Committee meeting since January, 1983.

ANSWER: Copies of minutes are attached hereto.

13. Attach hereto copies of any and all insurance policies protecting Defendant against loss, if any, resulting from the present action.

ANSWER: A copy of the present insurance binder is attached hereto. Diamond Farms is not in possession of the policy as yet.

14. Specifically list any and all legal process alleged to be abusive and any and all orders thereupon including appeals, and if in other than the present action attach copies hereto.

ANSWER: Complaint filed by Plaintiff

in the within matter; Complaint filed by Plaintiff in Civil Action Number 5991 in the Circuit Court for Montgomery County, Maryland; Appeal noted by Plaintiff of Civil Action Number 5991 to the Court of Special Appeals of Maryland.

15. Identify any and all legal actions to which Defendant has been a party (since July, 1981), and state the nature of each action.

ANSWER: To the best of Affiant's knowledge, other than the legal actions involving Plaintiff listed in Answer to Interrogatory 14 Diamond Farms has not been a party to any legal action other than collection and foreclosure proceedings brought against unit owners for non-payment of assessments.

DIAMOND FARMS CONDOMINIUM

[signed]

By: _____
Jeanne Smarte, Community Manager
Agent of Diamond Farms Condominium

EXHIBIT D is to be found herein at page 45.